

# MAINE STATE LEGISLATURE

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m  
of S.

L.D. 1781

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DATE: 3/14/96

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**NATURAL RESOURCES**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
117TH LEGISLATURE  
SECOND REGULAR SESSION**

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20 COMMITTEE AMENDMENT "A" to H.P. 1298, L.D. 1781, Bill, "An  
Act to Support Abatement of Uncontrolled Tire Stockpiles"

22

Amend the bill by striking out everything after the title  
and before the statement of fact and inserting in its place the  
following:

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**Emergency preamble.** Whereas, Acts of the Legislature do not  
become effective until 90 days after adjournment unless enacted  
as emergencies; and

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**Whereas,** uncontrolled tire stockpiles pose a threat to the  
health and safety of residents of this State; and

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34

**Whereas,** this Act contains mechanisms to prevent the  
formation of uncontrolled tire stockpiles and to control those  
that have already been formed; and

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**Whereas,** in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
Maine and require the following legislation as immediately  
necessary for the preservation of the public peace, health and  
safety; now, therefore,

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**Be it enacted by the People of the State of Maine as follows:**

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**Sec. 1. 38 MRSA §1310-BB,** as renumbered by RR 1995, c. 1,  
§33, is repealed.

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**Sec. 2. 38 MRSA §1316-A,** as amended by PL 1995, c. 314, §2,  
is further amended to read:

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**§1316-A. Investigation and enforcement**

52

**COMMITTEE AMENDMENT**

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2        Upon--investigation,--if--the--commissioner--finds--that--an  
3        uncontrolled-tire-stockpile-exists,--the--commissioner--may--issue  
4        notice--to--the--responsible--party--or--parties--and--conduct--an  
5        enforcement-hearing-in-accordance-with-section-347-A,--subsection  
6        2--and--issue--an--order--directing--the--responsible--party--or--parties  
7        to--mitigate--or--eliminate--the--threatening--or--hazardous--conditions  
8        posed-by-the-uncontrolled-tire-stockpile.

10        Upon--investigation,--if--the--commissioner--finds--that--an  
11        uncontrolled-tire-stockpile-is-creating-or-is-likely-to-create-a  
12        substantial-and-immediate-danger-to-public-health-or-safety-or-to  
13        the-environment,--the--commissioner--may--issue--an--emergency-order-in  
14        accordance--with--section--347-A,--subsection--3--directing--the  
15        responsible-party-or-parties-to--take--immediate--action--necessary  
16        to--reduce--or--alleviate--the--danger.

18        If the commissioner finds upon investigation that an area or  
19        location where used motor vehicle tires are or were handled,  
20        stored or disposed of is not licensed or is in violation of the  
21        solid waste management rules relating to tires and presents a  
22        significant fire hazard or a threat to public health or safety or  
23        to the environment, the commissioner may designate that location  
24        as an uncontrolled tire stockpile and may issue an administrative  
25        order directing the responsible party or parties to mitigate or  
26        eliminate the threatening or hazardous conditions posed by the  
27        uncontrolled tire stockpile.

28        An administrative order issued under this section must  
29        contain findings of fact describing, insofar as possible, and  
30        with reasonable specificity, the site of the activity and the  
31        danger to public health or safety or to the environment.

32        Service of the commissioner's findings and an administrative  
33        order must be made by hand delivery by an authorized  
34        representative of the department or by certified mail, return  
35        receipt requested.

36        The person to whom the administrative order is directed  
37        shall comply immediately. That person may apply to the board for  
38        a hearing within 5 days after receipt of the administrative  
39        order. The hearing must be held by the board at the next  
40        regularly scheduled meeting following receipt of the application,  
41        but in no event later than 30 days after receipt of the  
42        application. The nature of the hearing before the board is an  
43        appeal. At the hearing, all witnesses must be sworn, and the  
44        department shall first establish the basis for the administrative  
45        order and for naming the person to whom the administrative order  
46        was directed. Within 7 days after the hearing, the board shall  
47        make findings of fact and shall continue, revoke or modify the

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shall continue, revoke or modify the administrative order. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter VII.

The Office of the State Fire Marshal may employ its enforcement powers as authorized in Title 25, section 2396 to require a responsible party or parties to take any action necessary to protect public health and safety from substantial and immediate fire danger posed by an uncontrolled tire stockpile.

**Sec. 3. 38 MRSA §1316-B, first ¶,** as enacted by PL 1991, c. 517, Pt. A, §2, is amended to read:

If a responsible party does not comply immediately with all conditions of an administrative order issued pursuant to sections 347-A, ~~subsection 3~~ and section 1316-A or an administrative consent agreement issued pursuant to section 347-A, subsection 4 or any court order, the commissioner may act to abate, clean up or mitigate the threat or hazard posed by an uncontrolled tire stockpile. The commissioner may:

**Sec. 4. 38 MRSA §1316-B, sub-§2,** as enacted by PL 1991, c. 517, Pt. A, §2, is amended to read:

~~2. Process and remove. In consultation with the agency, cause~~ Cause the processing or removal of all stockpiled tires;

**Sec. 5. 38 MRSA c. 13, sub-c. II-B** is enacted to read:

**SUBCHAPTER II-B**

**MANAGEMENT OF MOTOR VEHICLE TIRES**

**§1316-L. Management of motor vehicle tires**

1. Disposal, storage and processing. A person may not dispose of, store or process, or cause to be disposed of, stored or processed, used motor vehicle tires at a site or facility in this State that:

A. Is an uncontrolled tire stockpile that is the subject of an administrative order of the commissioner pursuant to section 1316-A; or

B. Is unlicensed, unless the facility is exempt from licensing or otherwise authorized under state law to dispose of, store or process such tires.

2. Transfer to tire transporter. A person may not transfer custody or possession of scrap tires to any transporter if that person knows or has reason to believe the transporter:

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2 A. Does not have a license or permit to transport scrap  
tires as required by department rules;

4 B. Does not have a manifest documenting the transport of  
such tires as required by department rules; or

6 C. Will transport or handle the scrap tires in violation of  
8 this subchapter or of subchapter II-A or rules adopted  
10 pursuant to section 1304.

12 The department shall maintain current lists of uncontrolled  
tire stockpiles, licensed and authorized tire storage, disposal  
14 or processing facilities and transporters licensed or authorized  
to transport scrap tires.

16 **§1316-M. Transportation of tires**

18 1. Examination of license and manifest. A state, county or  
20 local law enforcement officer may examine a nonhazardous waste  
transporter license to determine if it is valid, or a  
22 nonhazardous waste manifest to determine whether scrap tires are  
being transported to a licensed or exempt waste facility.

24 2. Impoundment. When a law enforcement officer has  
26 reasonable grounds to believe that scrap tires are being  
transported to an unlicensed, nonexempt waste facility, or that  
28 scrap tires are being transported to a waste facility without a  
manifest or license as required by the department's nonhazardous  
30 waste transporter rules, the law enforcement officer may impound  
the vehicle and hold the vehicle until the transporter has fully  
32 complied with department's rules.

34 3. Alternative manifest. A law enforcement officer may  
issue an alternative manifest to the transporter to transport  
36 scrap tires to a licensed waste facility. An alternative  
manifest must include the following information:

38 A. The name and location of the waste generator;

40 B. The quantity of scrap tires; and

42 C. The name and location of the waste facility to which the  
44 scrap tires are being transported.

46 A copy of the alternative manifest prepared by the law  
enforcement officer and any summons issued to the transporter  
48 must be sent to the department.

50 4. Violation. A person commits a Class E crime if that  
person in fact transports scrap tires without a license or

2 without a manifest as required by department rules. The minimum  
 3 finest for transporting scrap tires without a manifest are as  
 4 follows: for a vehicle with a registered gross weight of up to  
 5 12,000 pounds, \$500; for a vehicle with a registered gross weight  
 6 of between 12,001 and 34,000 pounds, \$2,000; and for a vehicle  
 7 with a registered gross weight of over 34,000 pounds, \$4,500.  
 8 This minimum fine may not be suspended, but it may be reduced by  
 9 the amount of the disposal fee paid by the transporter for  
 10 disposal of the truckload of tires at a licensed waste facility.  
 11 A person commits a Class D crime if that person, after being  
 12 cited for a violation of the manifest requirements, transports  
 13 the tires to an unlicensed, nonexempt waste facility.  
 14 Notwithstanding Title 17-A, section 1301, the fine for a Class E  
 15 crime under this subsection may not exceed \$10,000 per violation,  
 16 and the fine for a Class D crime under this subsection may not  
 17 exceed \$25,000 per violation.

18 **Emergency clause.** In view of the emergency cited in the  
 19 preamble, this Act takes effect when approved.'

20 Further amend the bill by inserting at the end before the  
 21 statement of fact the following:

24 **FISCAL NOTE**

26 The Department of Environmental Protection will incur some  
 27 minor additional costs to administer certain requirements  
 28 pertaining to uncontrolled tire stockpiles. These costs can be  
 29 absorbed within the department's existing budgeted resources.

32 This bill may increase prosecutions for Class D and E  
 33 crimes. If a jail sentence is imposed, the additional costs to  
 34 the counties are estimated to be \$83.70 per day per prisoner.  
 35 These costs are not reimbursed by the State. The number of  
 36 prosecutions that may result in a jail sentence and the resulting  
 37 costs to the county jail system are expected to be insignificant.

38 The additional workload, administrative costs and indigent  
 39 defense costs associated with the minimal number of new cases  
 40 filed in the court system can be absorbed within the budgeted  
 41 resources of the Judicial Department. The collection of  
 42 additional fines may also increase General Fund revenue by minor  
 43 amounts.'

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**STATEMENT OF FACT**

**R. of S.**

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4 This amendment replaces the bill. It provides specific  
6 prohibitions against improper disposal, storage, processing or  
8 transportation of used motor vehicle tires. It sets forth  
10 standards for the Commissioner of Environmental Protection to use  
in determining whether a tire pile constitutes an uncontrolled  
tire stockpile. It specifies the process for serving responsible  
parties with an order relating to an uncontrolled tire stockpile  
and a process for appealing the order.

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14 The amendment also allows state, county and local law  
16 enforcement officers to examine the licenses of persons  
transporting scrap tires to determine whether they comply with  
waste transporter licensure and manifest rules and to impound the  
vehicle if a violation is found. Failure to comply with the  
licensure and manifest requirements is a Class E crime, with a  
18 fine up to \$10,000 for each violation, with a minimum fine of  
from \$500 to \$4,500 depending on the vehicle weight. A person  
20 commits a Class D crime if that person transports tires to an  
unauthorized facility after being cited under this law. The fine  
22 for those violations would be up to \$25,000 per violation.

24

The amendment also adds an emergency preamble, an emergency  
clause and a fiscal note to the bill.